



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 7762-23  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █  
XXX XX █ USMC

Ref: (a) 10 U.S.C. § 1552  
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, through counsel, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting his character of service be upgraded to Honorable (HON), or in the alternative, General Under Honorable Conditions (GEN), and that his narrative reason for separation be changed to one less derogatory, such as Secretarial Authority. Enclosures (1) and (2) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error on 8 December 2023, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval service records, applicable statutes, regulations, and policies to include references (b).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 25 October 1989. On 9 March 1990, he was awarded Meritorious Mast, but one month later, he received non-judicial punishment (NJP) for violating Article 92 of the Uniform Code of Military Justice (UCMJ), for dereliction of duty (not rendering proper honors during colors), and violating Article 134, for using threatening language toward a Lance Corporal. On 3 August 1990, he was found guilty at Summary Court-Martial (SCM) for again violating Article 134, by

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breaking restriction twice, and for violating Article 91, by using disrespectful language toward a Sergeant. He was sentenced to forfeiture of \$400.00 per month for one month, restriction for 40 days, and reduction in rank to E-2. Shortly thereafter, on 13 December 1990, during Operation Desert Shield, he was ordered to [REDACTED] where, between February and March 1991, he was assigned to work in the mail room. On 2 April 1991, he was found guilty at General Court-Martial (GCM) of violating Article 81 of the UCMJ for conspiring to commit the offense of stealing mail, and of violating Article 134, by wrongfully receiving a Nintendo Gameboy, stealing from the mail a Walkman cassette player and headphones, and opening and stealing from the mail a Nintendo Gameboy computer game. He was sentenced to 27 months confinement with hard labor, forfeiture of \$500.00 per month for 27 months, reduction in rank to E-1, and a BCD. His sentence was approved and ordered executed on 1 August 1991. On 9 March 1992 the Naval Clemency and Parole Board declined to grant clemency. However, on 9 April 1992, Petitioner was granted parole, to begin on 5 May 1992. Petitioner did not appeal his case, and remained largely on parole, through extensions, (due to his compliance and performance), until completion of his sentence. He was ultimately discharged on 16 August 1993 with a BCD.

d. Petitioner contends: (1) his discharge is an injustice because the collateral consequences far outweigh his misconduct, and (2) he has rehabilitated himself, and is an inspiration to his community.

e. For purposes of clemency and equity consideration, the Board noted Petitioner provided his Counsel's legal brief, a copy of reference (b), a personal statement, and six advocacy letters, attesting to Petitioner's difficult childhood, and his accomplishments and contributions since discharge.

#### CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board concluded Petitioner's request warrants relief. The Board found no error in Petitioner's BCD as part of his SPCM sentence. However, the Board reviewed Petitioner's application under the guidance provided in reference (b). After reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to "General (Under Honorable Conditions)" and his narrative reason for separation changed to "Secretarial Authority." In making this determination, the Board noted Petitioner's misconduct, and does not condone his actions leading to a BCD, but also considered the passage of time, Petitioner's youth in service, his completion of his GCM sentence, the fact he was paroled for compliant behavior. The Board also considered the evidence Petitioner submitted documenting his post-discharge good character and accomplishments, including multiple advocacy letters.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to HON discharge. The Board determined an HON discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. In making this determination, the Board considered not only Petitioner's misconduct, including his NJP and courts-martial, but also his overall Performance

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and Conduct averages of 4.3/3.8, which did not meet those required for a fully HON characterization of service at the time of his discharge. The Board concluded by opining that these negative aspects of the Petitioner's conduct and performance outweighed the positive aspects of his military record, and that a GEN discharge characterization, and no higher, was appropriate. Further, the Board concluded Petitioner's reentry code remains appropriate, based on his unsuitability for further military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

That Petitioner be issued a new DD Form 214, indicating that he was discharged on 16 August 1993 with a characterization of service of "General, Under Honorable Conditions," separation code of "JFF1," narrative reason of "Determination of Service Secretary – Secretary of the Navy Plenary Authority," and a separation authority of "Paragraph 6214, Marine Corps Separation Manual."

No further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

1/8/2024

